

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

THOMAS BUCHANAN on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SIRIUS XM RADIO, INC.,

Defendant.

Case No.:

3:17-cv-00728-D

**DECLARATION OF DANIEL M. HUTCHINSON IN SUPPORT OF PLAINTIFF'S
MOTION FOR ORDER PRELIMINARILY APPROVING SETTLEMENT**

1. I am a partner in of the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP (“LCHB”), counsel of record for Plaintiff in this matter. I have been one of the lawyers primarily responsible for the prosecution of Plaintiffs’ claims on behalf of the proposed Class. I am admitted *pro hac vice* to practice before this Court and am a member in good standing of the bar of the State of California; the United States District Court for the Central, Northern, and Southern Districts of California; the United States District Court for the Eastern District of Wisconsin; and the U.S. Courts of Appeals for the First, Fourth, Seventh, and Ninth Circuits. I respectfully submit this declaration in support of Plaintiff’s Motion for Order Preliminarily Approving Settlement. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

Background and Experience

2. LCHB is a national law firm with offices in San Francisco, New York, and Nashville. LCHB’s practice focuses on complex and class action litigation involving

employment, consumer, financial fraud, securities, product liability, environmental, and personal injury matters. Attached hereto as **Exhibit A** is a true and correct copy of LCHB's current firm resume, showing some of the firm's experience in complex and class action litigation. This resume is not a complete listing of all cases in which LCHB has been class counsel or otherwise counsel of record.

3. I graduated from Brown University in 1999. I served as a judicial extern to the Honorable Martin J. Jenkins, U.S. District Court, Northern District of California, in 2004. I graduated from the University of California, Berkeley, School of Law (Berkeley Law) in 2005.

4. Since 2005, I have practiced with LCHB, where I became a partner in January 2011. At LCHB, I have focused on representing plaintiffs in employment litigation (including discrimination and ERISA disputes), and financial and consumer fraud cases.

Consumer Protection Class Actions

5. As an LCHB partner, my practice has focused on a number of nationwide consumer protection class actions.

a. I, along with other attorneys from my firm, served as chair of the Plaintiffs Executive Committee in, *In re: Bank of Am. Credit Protection Mktg. & Sales Practices Litig.*, 3:11-md-02269-TEH (N.D. Cal.), multi-district litigation ("MDL") against Bank of America and FIA Card Services, challenging the imposition of charges for so-called "payment protection" or "credit protection" programs. In January 2013, the Court approved a \$20 million settlement including required practice changes.

b. I, along with other attorneys from my firm, served as co-lead counsel in a series of groundbreaking nationwide class actions under the Telephone Consumer Protection Act ("TCPA") and have prosecuted complex class action litigation of similar size, scope, and complexity to the instant case. LCHB has the resources necessary to conduct litigation of this nature efficiently and effectively. The TCPA is a technologically focused statute. In my experience, successful TCPA class actions require attorneys to understand the mechanics of automatic telephone dialing systems and complex computer databases that store and organize

call records. In addition, attorneys must closely track relevant orders, rulemakings, and petitions from the Federal Communications Commission, as the FCC has been very active on TCPA issues.

c. In September 2012, the court approved a \$24.15 million class settlement against Sallie Mae, the then-largest monetary settlement in the history of the TCPA. *See Arthur v. Sallie Mae, Inc.*, No. C10-0198 JLR, 2012 U.S. Dist. LEXIS 132413 (W.D. Wash. Sept. 17, 2012).

d. I, along with other attorneys from my firm and co-counsel, served as counsel in *Rose v. Bank of Am. Corp.*, 5:11-cv-02390-EJD (N.D. Cal.), and *Duke v. Bank of Am., N.A.*, 5:12-cv-04009-EJD (N.D. Cal.). On August 29, 2014, the Court approved a \$32,083,905 class settlement, which surpassed the *Sallie Mae* settlement as the largest monetary settlement in the history of the TCPA.

e. I, along with other attorneys from my firm and co-counsel, served as counsel in *In re Capital One Telephone Consumer Protection Act Litigation*, Master Docket No. 1:12-cv-10064 (N.D. Ill.). On February 12, 2015, the court approved a \$75,455,098.74 class settlement.

f. I, along with other attorneys from my firm and co-counsel, served as counsel in a series of TCPA class action lawsuits against Wells Fargo. Court-approved nationwide class settlements in five actions total over \$77.6 million. *Cross v. Wells Fargo Bank N.A.*, Case No.: 1:15-cv-01270-RWS (N.D. Ga. Feb. 13, 2017) (\$30,446,022.75); *Markos v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-01156 (N.D. Ga. Jan. 30, 2017) (\$16,417,496.70); *Luster v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-01058 (N.D. Ga. Nov. 8, 2017) (\$14,834,058); *Franklin v. Wells Fargo Bank N.A.*, Case No.: 14-cv-2349 (S.D. Cal. Jan. 29, 2016) (\$13,859,103.80); *Prather v. Wells Fargo Bank, N.A.*, Case No. 1:15-cv-04231 (N.D. Ga. Aug. 31, 2017) (\$2,075,071.80).

g. I, along with other attorneys from my firm and co-counsel, served as counsel in *Wilkins v. HSBC Bank Nev., N.A.*, Case No. 14-cv-190 (N.D. Ill.). On February 27,

2015, the court approved a \$39,975,000 class settlement. In approving the settlement Judge James F. Holderman commented on “the excellent work” and “professionalism” of LCHB and its co-counsel in securing a \$39.975 million non-reversionary cash settlement in that TCPA class action.

h. I, along with other attorneys from my firm and co-counsel, served as counsel in *Connor v. JPMorgan Chase Bank*, Case No. 10 CV 1284 DMS BGS (S.D. Cal. Mar. 12, 2012), a nationwide TCPA class action. On February 5, 2015, the court approved a \$11,665,592.09 cash settlement.

i. I, along with other attorneys from my firm and co-counsel, served as counsel in *Thomas v. Dun & Bradstreet Credibility Corp.*, Case No. 2:15-cv-03194-BRO-GJS (C.D. Cal.). On March 22, 2017, the court approved a \$10.5 million cash settlement for a class of small business owners who received telemarketing calls.

j. I, along with other attorneys from my firm and co-counsel, served as counsel in the nationwide TCPA class actions *Bradley v. Discover Financial Services*, Case No. 4:11-cv-5746-YGR (N.D. Cal.), and *Steinfeld v. Discover Financial Services*, Case No. 3:12-cv-01118-JSW (N.D. Cal.). In March 2014, the court approved an \$8.7 million class settlement.

k. I, along with other attorneys from my firm and co-counsel, serve as counsel in *Ossola v. American Express Co., et al.*, Case No. 1:13-CV-4836 (N.D. Ill.). On December 2, 2016, the court approved two separate class settlements of \$8.25 million and \$1 million each.

l. I, along with other attorneys from my firm and co-counsel, serve as counsel in *Smith v. State Farm Mutual Auto. Ins. Co., et al.*, Case No. 1:13-cv-02018 (N.D. Ill.). On December 8, 2016, the court approved a \$7 million settlement.

m. I, along with other attorneys from my firm and co-counsel, serve as counsel in *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884 (N.D. Ill. June 25, 2018) (certifying nationwide class). On April 9, 2019, the court preliminarily approved a \$6.5 million settlement.

n. I, along with other attorneys from my firm and co-counsel, served as counsel in *Rice-Redding v. Nationwide Mutual Automobile Ins. Co.*, Case No. 1:16-cv-03634 (N.D. Ga.). On March 21, 2019, the court preliminarily approved a \$5 million settlement.

o. I, along with other attorneys from my firm and co-counsel, served as counsel in *Bayat v. Bank of the West*, Case 3:13-cv-02376-EMC (N.D. Cal.). On April 15, 2015, the court approved a \$3,354,745.98 settlement.

p. I, along with other attorneys from my firm and co-counsel, served as counsel in *Wannemacher v. Carrington Mortgage Services LLC*, Case No. 8:12-cv-02016-FMO-AN (C.D. Cal.). On December 22, 2014, the court approved a \$1.035 million settlement.

q. In addition to the foregoing, I currently serve as co-lead counsel in the following cases under the TCPA: *Brown v. DirecTV, LLC*, No. CV 13-1170 DMG (EX), 2019 WL 1434669 (C.D. Cal. Mar. 29, 2019) (certifying two nationwide classes); *Cordoba v. DirecTV, LLC*, 320 F.R.D. 582 (N.D. Ga. 2017) (certifying a nationwide TCPA DNC Registry class and a nationwide TCPA internal DNC list class); *see also Barnes v. Wells Fargo Bank, N.A.*, Case No. 3:18-cv-06520-EDL (N.D. Cal.); *Burk v. Direct Energy, LP*, Case No. 4:19-cv-00663 (S.D. Tex.); *DeCapua v. Metropolitan Property & Casualty Ins. Co.*, Case No. 1:18-cv-00590-WES-LDA (D.R.I.); *Dennis v. Amerigroup Corp.*, Case No. 3:19-cv-05165-RBL (W.D. Wash.); *Diaz-Lebel v. TD Bank USA, N.A., et al.*, Case No. 0:17-cv-05110-MJD-BRT (D. Minn.); *Grogan v. Aaron's Inc.*, Case No. 1:18-cv-02821-AT (N.D. Ga.); *Jenkins v. National Grid USA, et al.*, Case No. 2:15-cv-01219-JS-GRB (E.D.N.Y.); *Pieterston v. Wells Fargo Bank, N.A.*, Case No. 3:17-cv-02306-EDL (N.D. Cal.); *Pine v. A Place For Mom, Inc.*, Case No. Case 2:17-cv-01826-TSZ (W.D. Wash.); *Postle v. Allstate Ins. Co.*, Case No. 1:17-cv-7179 (N.D. Ill.); *Woodrow v. Sagent Auto LLC*, Case No. 2:18-cv-01054-JPS (E.D. Wis.).

r. I was co-lead counsel in *Yarger v. ING Bank, fsb*, Civil Action No. 1:11-cv-00154-LPS (D. Del.), representing consumers who charge that ING Direct breached its promise to allow them to refinance their home mortgages for a fixed flat fee of \$500 or \$750, and instead charged a higher fee of one-monthly mortgage payment for refinancing. In 2012, the

court certified a class of consumers in ten states who purchased or retained an ING mortgage during the class period. On October 7, 2014, the court approved a \$20,350,000 class settlement.

6. Prior to my elevation to partner, I participated in successful litigation of a wide variety of other complex federal and state consumer class actions during my professional career. Class action cases I have successfully prosecuted to judgment or settlement, in addition to the foregoing, include: *Sutter Health Uninsured Pricing Cases*, Case No. J.C.C.P. 4388 (Sacramento Super. Ct.) (lead class counsel in consumer class action that resulted in over \$275 million settlement and comprehensive pricing and collections policy changes for uninsured patients across all Sutter hospitals); *Catholic Healthcare West Cases*, Case No. J.C.C.P. 4453 (San Francisco County Super. Ct.) (lead class counsel in consumer class action that resulted in over \$423 million settlement and pricing and collections policy changes for uninsured patients across all CHW hospitals); *Scripps Health Cases*, Case No. IC859468 (S.D. Super. Ct.) (lead class counsel in consumer class action that resulted in over \$73 million settlement and pricing and collections policy changes for uninsured patients at Scripps hospitals); *John Muir Uninsured Healthcare Cases*, Case No. J.C.C.P. 4494) (Contra Costa County Super. Ct.) (lead class counsel in consumer class action that resulted in over \$113 million settlement and pricing and collections policy changes for uninsured patients at John Muir hospitals); *Cincotta v. California Emergency Physicians Medical Group*, No. 07359096 (Cal. Supr. Ct.) (lead class counsel in consumer class action that resulted in over \$27 million settlement and pricing and collections policy changes, including complete debt elimination—100% cancellation of the bill, for nearly 100,000 uninsured patients who alleged they were charged excessive and unfair rates for emergency room service across 55 hospitals throughout California).

Antitrust and Securities Actions

7. I have also served as Class Counsel in several antitrust and other financial fraud actions.

a. I served, with my co-counsel, as Lead Counsel in *Haley Paint Co. v. E.I. Dupont De Nemours and Co. et al.*, No. 10-cv-00318-RDB (D. Md.), a certified nationwide

class action lawsuit on behalf of direct purchasers of titanium dioxide charging that defendants conspired to fix, raise, and maintain the price of titanium dioxide in the United States. In November 2013, the court approved class settlements with four defendants totaling \$163.5 million.

8. As an LCHB associate, I played a significant role in several antitrust and securities actions, including:

a. I, along with other attorneys from my firm and co-counsel, served as Plaintiffs' counsel in *Quantegy Recording Solutions, LLC, et al. v. Toda Kogyo Corp., et al.*, No. C-02-1611 (PJH), antitrust litigation against manufacturers, producers, and distributors of magnetic iron oxide ("MIO"). In August 2006 and January 2009, the Court approved settlements totaling \$6.35 million.

b. I have also successfully litigated complex individual actions, including *Alaska State Department of Revenue v. America Online*, No. 1JU-04-503 (Alaska Supr. Ct.) (co-counsel in securities fraud action brought by the Alaska State Department of Revenue, Alaska State Pension Investment Board and Alaska Permanent Fund Corporation that settled for \$50 million in December 2006).

Employment Class Actions

9. As an LCHB partner, I have gained extensive experience in the litigation, trial, and settlement of complex employment class actions as Class Counsel in several cases.

a. I served as co-lead counsel in *Strauch v. Computer Sciences Corporation*, Case No. 2:14-cv-00956 (D. Conn.), a collective and class action lawsuit alleging that CSC misclassified information technology support workers as exempt from overtime pay in violation of the federal Fair Labor Standards Act ("FLSA"), and California and Connecticut law. On December 20, 2017 following a three-week trial, a jury found that CSC wrongly and willfully denied overtime pay. The court will award damages based upon the jury's liability verdict.

b. I served as co-lead counsel in *Vedachalam v. Tata Am. Int'l Corp.*, Case No. 3:06-cv-00963-CW (N.D. Cal.), a case on behalf of a certified class of over 13,000 foreign

nationals working in the United States who were denied promised wages and benefits. In July 2013, the court approved a \$29.75 million nationwide class settlement.

c. I served as co-lead counsel in *Ellis v. Costco Wholesale Corp.*, No. 04-03341-EMC (N.D. Cal.), a case on behalf of two certified classes of female employees charging that Costco discriminates against women in promotions to management positions. In May 2014, the Court approved a class settlement requiring changes to Costco's promotion process and establishing an \$8 million settlement fund.

d. I, along with other attorneys from my firm and co-counsel, represented plaintiffs who contracted with MHN Government Services, Inc., to provide counseling services through the Department of Defense to military members and their families. The case was venued in the United States District Court for the Northern District of California. In April 2016, an arbitrator approved a class settlement in the matter, which resulted in payment of \$7,433,109.19 to class members.

e. I served as co-lead counsel in *Martin v. Bohemian Club*, Case No. SCV-258731 (Sonoma Super. Ct.), a wage-and-hour case on behalf of approximately 664 individuals who worked as seasonal camp valets. On September 28, 2016, the Court approved a \$7 million class settlement.

f. I, along with other attorneys from my firm and co-counsel, served as co-lead counsel in *Holloway v. Best Buy*, No. C05-5056-PJH (N.D. Cal.), representing a class of current employees of Best Buy that alleged Best Buy stores nationwide discriminated against women, African Americans, and Latinos. In November 2011, the Court approved a settlement of the class action in which Best Buy agreed to changes to its personnel policies and procedures that have enhanced the equal employment opportunities of the tens of thousands of women, African Americans, and Latinos employed by Best Buy nationwide.

10. In addition to the foregoing, prior to my elevation to partner I participated in successful litigation of a wide variety of other complex federal and state employment class actions during my professional career.

a. I, along with other attorneys from my firm and co-counsel, served as co-lead counsel in *Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.*, No. 01-0892-CRB (N.D. Cal.), representing Mexican workers and laborers, known as Braceros (“strong arms”), who came from Mexico to the United States pursuant to bilateral agreements from 1942 through 1946 to aid American farms and industries hurt by employee shortages during World War II in the agricultural, railroad, and other industries. A settlement required the Mexican government to provide a payment of approximately \$3,500 to Braceros, or their surviving spouses or children. In approving the settlement in February 2009, U.S. District Court Judge Charles Breyer stated:

I’ve never seen such litigation in eleven years on the bench that was more difficult than this one... Notwithstanding all of these issues that kept surfacing ... over the years, the plaintiffs persisted...And, in fact, they achieved a settlement of the case, which I find remarkable under all of these circumstances.

b. I, along with other attorneys from my firm and co-counsel, served as co-lead counsel in *Barnett v. Wal-mart Stores, Inc.*, Case No. 01-2-24553-8 SEA (Sup. Ct. Wash.), a certified statewide wage and hour class action filed on behalf of hourly employees challenging the company’s failure to compensate its hourly employees for missed rest and meal breaks and off-the-clock work in stores throughout Washington state. This case settled for \$35 million, as well as injunctive relief governing company policies.

c. I, along with other attorneys from my firm and co-counsel, served as one of plaintiffs’ lead counsel in *Amochaev v. Citigroup d/b/a Smith Barney*, Civ. No. 05-1298-PJH (N.D. Cal.), a gender discrimination class action on behalf of female Financial Advisors employed by Smith Barney that resulted in a settlement involving comprehensive injunctive relief and over \$33 million in monetary relief.

Other Experience and Awards

11. I have received several awards and honors for my litigation efforts.
12. In 2016, I was named as one of the Daily Journal’s Top 40 Under 40 leading lawyers in California.

13. In 2014, Law360 recognized me as one of six of the nation's top employment lawyers under 40. *See* Daniel Siegal, *Rising Star: Lieff Cabraser's Daniel Hutchinson* (Apr. 22, 2014), *available at* <http://www.law360.com/employment/articles/530612>; *Law360 Names Top Attorneys Under 40* (Apr. 11, 2014), *available at* <http://www.law360.com/employment/articles/525943>.

14. In 2012, The Recorder named me as one of "50 Lawyers on the Fast Track."

15. In 2013, 2014, 2015, 2016, 2017, and 2018, I was recognized as a Northern California Super Lawyer and, from 2009 to 2012, was named as a Northern California Super Lawyer Rising Star.

16. In addition to being an active litigator, I have long been involved in many educational and legal groups, including the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board Chair, 2015; Board Chair-elect, 2014; Board Secretary, 2011-2013; Member of the Board of Directors, 2009-2018); Bar Association of San Francisco Cybersecurity and Privacy Law Section (vice chair, 2015-2018); American Bar Association (Section of Labor & Employment Law Leadership Development Program); Association of Business Trial Lawyers (Leadership Development Committee, 2008-2010); National Employment Lawyers Association; Bar Association of San Francisco; Consumer Attorneys of California; and National Bar Association.

17. I am a frequent speaker on class action and employment law topics, including at events sponsored by the American Bar Association's Section of Labor and Employment Law, the Consumer Attorneys of California, the Mason Judicial Education Program, the Impact Fund, the National Employment Lawyers Association, the Practising Law Institute, and the UCLA School of Law. In March 2014, I provided a CLE presentation on arbitration and class actions to approximately 75 California state and federal court judges through the Judicial Education Program provided by the Law & Economics Center at George Mason University School of Law.

18. I have published and presented papers on race and gender class actions under Title VII, including "Ten Points from *Dukes v. Wal-Mart Stores, Inc.*," 20(3) CADS

Report 1 (Spring 2010); “Pleading an Employment Discrimination Class Action” and “EEO Litigation: From Complaint to the Courthouse Steps,” ABA Section of Labor and Employment Law Second Annual CLE Conference (2008); and “Rule 23 Basics in Employment Cases,” Strategic Conference on Employment Discrimination Class Actions (2008).

Commitment to Prosecuting this Action

19. Together, the cases described above have resulted in court-approved class action settlements, with a combined total recovery for class members exceeding \$700 million in cash, plus other relief. The TCPA class settlements described in paragraph 7 above (but excluding the proposed Settlement in this action), total over \$310 million. LCHB’s experience in these cases, and my experience in particular, has provided LCHB and me with expertise in the legal, factual, management, notice, and administration issues that characterize these types of class actions.

20. LCHB has devoted, and will continue to devote, its time and resources to pursuing the class action TCPA claims in this matter on a contingent-fee basis.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on April 26, 2019



Daniel M. Hutchinson